

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION)	
)	
)	MDL No. 1456
)	Civil Action No. 01-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	Hon. Patti B. Saris
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	Magistrate Judge Marianne B. Bowler
<i>Inc. V. Abbott Laboratories, Inc.</i>)	
<i>No. 07-CV-11618-PBS</i>)	
)	

**AUGUST 1, 2008 STATUS REPORT
OF THE RELATOR VEN-A-CARE OF THE FLORIDA KEYS**

The Relator, Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care" or the "Relator"), through its undersigned counsel respectfully files this Status Report for August 1, 2008 in accordance with the Court's June 17, 2004 Procedural Order and states:

Complaint/Motion to Dismiss

On March 14, 2008, the Court denied Abbott's Motion to Dismiss Ven-A-Care's Complaint and ordered the parties to propose a discovery schedule. On April 14, 2008, Abbott filed a Request for Certification Pursuant to § 1292(b) and Stay of Discovery. Ven-A-Care filed its opposition to the Request on April 29, 2008. Abbott sought leave to file a relatively extensive reply brief, with exhibits, on May 9, 2008. Ven-A-Care did not oppose that motion for leave to file, but it requested leave to file a surreply brief which the Court granted on June 10, 2008. The briefing was completed and on July 15, 2008 the Court denied Abbott's Request for Certification Pursuant to § 1292(b) and Stay of Discovery.

Hearing on coordination of cases

On July 24, 2008 the Court held a hearing on the scheduling of cases pending in MDL

1456 which involve claims brought by or for the benefit of the United States. The Court directed the parties in *United States ex rel. Ven-a-Care of the Florida Keys, Inc., et al. v. Abbott Laboratories, Inc.*, Civil Action No. 06-11337-PBS (the “Abbott”), *United States ex rel. Ven-a-Care of the Florida Keys, Inc., et al. v. Dey, Inc.*, Civil Action No. 05-11084-PBS (the “Dey” case), and *United States ex rel. Ven-a-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corp., et al.*, Civil Action No. 07-10248-PBS (the “Roxane” case) to coordinate their discovery and summary judgment proceedings. The Court also directed that this case, *United States ex rel. Ven-a-Care of the Florida Keys, Inc., et al. v. Abbott Laboratories, Inc.*, Civil Action No. 07-11618-PBS (the “Ery” case), be coordinated with these other three cases; at least as to all state Medicaid discovery. Specifically, the Court stated it would not “redo” the issues with erythromycin. (See pp. 35-36 of hearing transcript). This position was consistent with the Court’s repeated comments to the effect that summary judgment proceedings should not be conducted twice. The Court set dates as follows:

May 30, 2009	Motions for summary judgment shall be filed.
June 30, 2009	Responses to motions for summary judgment shall be filed.
July 15, 2009	Reply memorandum, if any, shall be filed.
July 30, 2009	Sur-reply memorandum, if any, shall be filed.
September 17, 2009 (2:00pm)	Hearing on motions for summary judgment

Pending Motions

After multiple conferences with Abbott concerning case scheduling, the parties were not able to agree on a Case Management Order. Relator will be filing a Motion to Enter Case Management Order as soon as possible; most likely on August 4, 2008. Relator’s Motion will seek the entry of a CMO which will enable the Ery case to meet the above-noted summary

judgment schedule set by the Court. This Motion is not agreed and the parties will be submitting competing Case Management Orders.

Scheduled Hearings

No hearings have been scheduled.

Pending Discovery

Relator, Ven-a-Care, is prepared to commence discovery immediately. The parties have agreed to work jointly in completing a FRCP 26(f) report which should be filed in the next 10 days. The parties have agreed to exchange disclosures on August 22, 2008. The parties have been ordered to participate in state Medicaid discovery which will commence in September 2008. In the absence of a CMO, Ven-a-Care will act to conclude all fact discovery on or before November 28, 2008. In the absence of a CMO, Ven-a-Care will act to conclude all expert discovery on or before April 9, 2009. Ven-a-Care will strive to meet these deadlines so the Ery case will be ripe for summary judgment proceedings as scheduled by the Court in the other cases involving Ven-a-Care brought by or for the benefit of the United States.

Respectfully submitted,

For Ven-a-Care of the Florida Keys, Inc.

/s/ Jarrett Anderson

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above
**AUGUST 1, 2008 STATUS REPORT OF THE RELATOR VEN-A-CARE OF THE
FLORIDA KEYS** to be served on all counsel of record via electronic service pursuant to
Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve
for posting and notification to all parties.

/s/ Jarrett Anderson

Dated: AUGUST 1, 2008